IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7022 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ACCURA POLYTECH PVT. LTD.

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 7022 of 2004

MRS YOGINI V PARIKH for Petitioner No. 1

MR MS RAO for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/07/2004

ORAL JUDGEMENT

Rule. Mr.M.S.Rao appearing for respondent waives service of notice of rule. At the joint request of the learned advocates for the parties, the petition is taken

up for final disposal today.

2. The case of the petitioner in the nutshell is that the petitioner as per the requirements of law started depositing with the respondent Commissioner deductions towards provident fund of the workers employed by the petitioner since 1999. It is also the case of the petitioner that the petitioner has consistently and regularly paid all the dues. In fact, the petitioner has produced at Annexure D, the details of the payments made by it till 3rd May, 2003. It is, therefore, the case of the petitioner that there is no amount due and payable under the Employees Provident Fund and Miscellaneous Provisions Act ("the said Act" for short) for period from March 1998 to February 2003. It is, therefore, the case of the petitioner that ignoring these facts, the respondent has initiated inquiry and passed order under section 7-A of the said Act on 30th June 2003. The petitioner vide its letters dated 25.7.2003 and 4.4.2004 requested the respondent to review the decision in exercise of powers under section 7-B of the the said Act. The said request however came to be turned down by the respondent through the letter dated 7.4.2004 and in fact notice dated 9.6.2004 came to be issued seeking recovery of the alleged outstanding dues.

3. The short submission of the learned advocate for the petitioner is that the petitioner has paid up the entire amount and that there is no dues towards provident fund contribution. It is the case of the petitioner that the respondent has overlooked this important aspect of the matter and passed orders dated 30th June, 2003 and 7th April 2004. She requests that the respondent be directed to take into consideration the material produced by the petitioner and come to a fresh conclusion after hearing the petitioner.

4. Learned advocate for the respondent Mr.M.S.Rao on the other hand states that the respondent would like to examine these factual aspects and it would not be possible for him to accept the averments made by the petitioner at this stage. Considering the submissions made, I am of the opinion that the matter is required to be remanded to the respondent for fresh consideration especially to examine whether the petitioner has already paid up the dues of the provident fund or not. For that purpose, the respondent shall take into account the material already produced by the petitioner and which may be produced hereafter within a period of two weeks from today.

5. To facilitate this exercise, I quash and set aside the orders dated 30th June, 2003 and the order dated 7th April 2004 and direct the respondent to consider the matter afresh after giving an opportunity to the petitioner to be heard and considering the material already produced as well as that may be produced within a period of two weeks hereafter as mentioned above. In view of the fact that the impugned orders are set aside, the notice of recovery dated 29.4.2004 and 9.6.2004 shall not be acted upon. The petitioner shall pay cost of Rs.5,000/- to the respondent.

5. With the above directions, the petition stands disposed of. Rule is made absolute to the above extent.

(Akil Kureshi, J.)
(vjn)